

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**James Harry Hodson, III,
Petitioner,**

:

vs.

:

C.A. No. 05-92 Erie

**Marilyn Brooks,
Respondents,**

:

DISTRICT ATTORNEY'S ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

AND NOW this 17th day of September, 2005, comes the Commonwealth of Pennsylvania, by Paula C. DiGiacomo, Esq., First Assistant District Attorney of Crawford County, Pennsylvania, and files the following answer to the Petitioner's Petition for Writ of Habeas Corpus and answers the Petition as follows:

1. The Commonwealth denies each and every allegation of fact alleged by the Petitioner in the Petition except those facts specifically admitted herein.
2. The Petitioner was found guilty of Involuntary Deviate Sexual intercourse(cunnilingus), 18 Pa. C.S.A. §3123(a)(2) and Simple Assault, 18 Pa. C.S.A. §2701(a)(1).
3. On July 26, 2002, Petitioner was sentenced to undergo imprisonment for a minimum period of four years and a maximum of eight years, which was a mitigated range sentence.
4. On August 7, 2000, the Petitioner filed a post sentence motion for new trial. Said motion was denied by the trial court on September 27, 2000.
5. Petitioner did not file a direct appeal but rather filed a petition for post conviction collateral relief on November 2, 2000. On April 9, 2001, the lower court granted Petitioner PCRA relief in the form of the right to take a direct appeal nunc pro tunc.
6. On April 10, 2001, Petitioner filed an appeal to the Superior Court. On December 18, 2001, the Superior Court affirmed the sentence order.
7. On January 14, 2002, Petitioner filed a petition for allowance of appeal with the Supreme Court. On May 31, 2002, the Supreme Court denied Petitioner's petition for allowance of appeal.
8. On September 27, 2002, Petitioner filed his second pro se petition for post conviction collateral relief. The lower court appointed counsel and counsel filed an amended motion for post conviction collateral relief on January 17, 2003.
9. On October 1, 2003, the lower court denied Petitioner's PCRA petition.

10. On October 31, 2003, Petitioner filed a notice of appeal with the Superior Court. On September 8, 2004, the Superior Court affirmed the lower court's decision.
11. It is the Commonwealth's opinion that this Petition should be summarily dismissed or denied because said Petition was filed beyond the Federal Habeas Corpus limitations period found in 28 U.S.C. § 2244(d).
12. It is the Commonwealth's opinion that this Petition should be summarily dismissed or denied because Petitioner has failed to exhaust his state court remedies.
13. The brief of the Petitioner submitted to the Pennsylvania Superior Court contesting lower state court order denying his post conviction relief petition is set forth as Item #24 in Volume II of Respondent's Reproduced Record. The brief of the Commonwealth submitted to the Superior Court of Pennsylvania relating to the lower court's denial of the Petitioner's state PCRA petition is set forth as item #25 in Volume II of Respondent's Reproduced Record. The Respondent incorporates by reference said briefs as more fully set forth herein by reference to the Reproduced Record in this matter.
14. The opinion and order of the Superior Court of Pennsylvania dated September 8, 2004, affirming denial of the Petitioner's state post conviction relief petition is set forth in Item #26 in Volume II of Respondent's reproduced record in this matter. Respondent incorporates by reference said item as more fully set forth herein.
15. All known transcripts of all hearings held pretrial, trial, sentencing and post conviction proceedings are available and have been incorporated into Volume I and II of Respondent's Reproduced Record in this matter. Respondent is unaware of any proceedings that were recorded but not transcribed. Respondent believes that all of the transcripts relating to the testimony of both pretrial, trial and post conviction relief act proceeding are relevant and incorporates by reference those transcripts to this answer as set forth in Respondent's Reproduced Records in Volumes I and II.

Wherefore, based on the foregoing, the Commonwealth respectfully requests this Honorable Court to dismiss the Petition for Writ of habeas Corpus in the above captioned case.

Respectfully submitted,



PAULA C. DIGIACOMO, ESQ.
First Assistant District Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

James Harry Hodson, III
Petitioner

:

Vs.

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Respondent

:

PROOF OF SERVICE

I hereby certify that I am serving the foregoing document upon the person and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121.

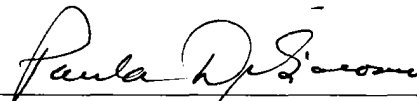
United States District Court
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James Hodson, III
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Tracey McCullough
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Marilyn Brooks
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Date: October 17, 2005



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October 17, 2005

FRANCIS J. SCHULTZ
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CRAIG A. HOWE
Assistant District Attorneys

United States District Court
PO Box 1820
Erie, PA 16507

RE: James Harry Hodson, III
C.A. No.: 05-92 ERIE

Dear District Court:

Enclosed is the Respondent's Brief, Answer to Petition and complete reproduced record in the above captioned case along with a Proof of Service.

Sincerely,



PAULA C. DIGIACOMO, ESQ.
First Assistant District Attorney

PCD/ml
Enclosures
Cc: James Hodson
Tracey McCullough



OFFICE OF THE DISTRICT ATTORNEY
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October 17, 2005

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RE: James Harry Hodson, III
C.A. No.: 05-92 Erie

Dear District Court:

This office apologizes for the delay in getting to the Court the Respondent's Brief, Answer to Petition and complete reproduced record. The deadline to file these items was inadvertently missed. The delay was an oversight and meant as no disrespect to the Court and its Members. Please accept our apologies and know that we will do our best to ensure that this never happens again.